

Glenn Saums

From: Glenn Saums [glenn_saums@nmenv.state.nm.us]
Sent: Monday, January 12, 2004 12:55 PM
To: Jolene McCaleb
Subject: RE: SJWC Comments on NMED's Proposed Implementation Procedures

Ms. McCaleb,
This e-mail is to acknowledge receipt of your e-mailed comments on January 12, 2004.
Glenn Saums

-----Original Message-----

From: Jolene McCaleb [mailto:JMcCaleb@wtmlawfirm.com]
Sent: Monday, January 12, 2004 12:23 PM
To: 'Glenn Saums'
Subject: SJWC Comments on NMED's Proposed Implementation Procedures

Dear Mr. Saums:

Pursuant to the public notice of a 60-day comment period, attached please find: "Comments of San Juan Water Commission on Proposed Revision to the New Mexico Continuing Planning Process to Establish Implementation Procedures for the State's Antidegradation Policy. SJWC appreciates the opportunity to comment.

A hard copy of these comments will follow in the mail.

Please send me a confirmation indicating that you have received the comments via e-mail. Thanks! Jolene McCaleb

<<2004Jan12 SJWC Comments on Proposed Antidegradation Policy.doc>>

Jolene L. McCaleb
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January 12, 2004

Mr. Glenn Saums
Point Source Regulation
Section Program Manager
Surface Water Quality Bureau
New Mexico Environment Department
P.O. Box 26110
Santa Fe, NM 87502

Via e-mail(glenn_saums@nmenv.state.nm.us) and U.S. mail

Re: Comments of San Juan Water Commission on Proposed Revision to the New Mexico Continuing Planning Process to Establish Implementation Procedures for the State's Antidegradation Policy

Dear Mr. Saums:

Pursuant to the public notice of a 60-day comment period on the New Mexico Environment Department's ("NMED") proposed revision to the New Mexico Continuing Planning Process establishing antidegradation policy implementation procedures, I hereby submit the following comments to NMED on behalf of the San Juan Water Commission ("SJWC").

First, let me state that SJWC commends NMED's efforts to safeguard water quality throughout the state and appreciates all of the hard work NMED has put into developing the proposed antidegradation policy implementation procedures. SJWC has no significant opposition to any of NMED's proposals, and the comments below are submitted in an effort to identify areas where SJWC believes certain changes or clarifications will enhance both the efficacy of, and the public's understanding of, the implementation procedures.

1. Tier Definitions—Tier 1 (Page 1)

a. The definition of "Tier 1" should be revised to remove the uncertainty caused by the use of the term "exceed." That term can be interpreted to mean either "violate" or "be better than."

b. This section references "Figure 1." According to Figure 1, Tier 1 applies only to those waters on the section 303(d) list of impaired waters or on the section 305(b)

monitoring and assessment report. This appears to conflict with the definition of “Tier 1” because that definition includes waters that “meet but do not exceed the water quality standards for existing or designated uses.” This conflict should be resolved.

b. Tier 1 states that “existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.” SJWC recommends that language be added to this section regarding whether or not water quality can be lowered in Tier 1 streams, and if so, under what circumstances. (See comment below at paragraph no. 3.)

2. Tier Definitions—Tier 2 (Page 2)

The second full paragraph of this section states: “In Tier 2 waters, *limited* degradation may be allowed after consideration of several factors, including but not limited to” (Emphasis added.) The word “limited” should be deleted, as it is not consistent with the policy cited in the paragraph above (20.6.4.8(A)(2) NMAC), which states that “allowing *lower* water quality is necessary to accommodate important economic and social development” (Emphasis added.) Because this policy does not state that “limited degradation” (or “limited lower water quality”) may be allowed, the use of the word “limited” conflicts with the policy set out in 20.6.4.8(A)(2) NMAC.

3. Implementation—Point and Regulated Sources—Tier 1 (Page 5)

a. The first paragraph of this section clearly states that Tier 1 waters are not to be “degraded by a new or increased discharge or the renewal of a permit for an existing discharge in certain circumstances.” The intent of this statement is not clear. The unanswered questions are: (i) Is degradation allowed in Tier 1 waters? and (ii) If so, under what circumstances? If NMED is proposing that no degradation be allowed in Tier 1 waters, even though existing uses can be protected, then that policy should be stated in the definition of Tier 1. Revision of the Tier 1 definition would eliminate the questions raised above.

b. That said, SJWC questions whether or not it is appropriate to apply a “no degradation” policy to Tier 1 waters if existing uses can be maintained. Finally, this section appears to indicate that the means for protecting Tier 1 waters are the 401 certification process and TMDLs, but not antidegradation review. If this is NMED’s intent, such intent should be clearly stated.

4. Implementation—Point and Regulated Sources—Tier 2—Determination of Necessity—Publicly Owned and Private Domestic Treatment Work Discharges (Page 6)

a. Several very specific criteria are listed in this section. If the criteria are met, the works would not be subject to Tier 2 review. What are the sources of the criteria for *de minimus* impacts?

b. SJWC supports the provision that allows dischargers to demonstrate to NMED's satisfaction that pollutant loads can be "offset by enforceable reductions by other point or nonpoint sources." This is a progressive and potentially beneficial approach to solving water quality problems.

c. NMED's clarification regarding the application of the antidegradation rule to general permits is helpful, and it should remain in the implementation document.

5. Implementation—Point and Regulated Sources—Tier 2—Conducting Tier 2 Review (Pages 13-15)

a. NMED's deadlines regarding the processing of permit applications are helpful, but they should be shortened. The total processing time is a minimum of 240 days, or almost eight months, which is a long time for a municipality or industry to await such a decision. The proposed timeline can be shortened by cutting the 60-day durations for various activities to 30 days.

b. Please see the comments in paragraph no. 7 below regarding the Antidegradation Data Worksheet found in Appendix A.

6. Implementation—Point and Regulated Sources—Tier 2—Conducting Tier 2 Review—Public Comment and Intergovernmental Coordination (Page 15)

a. The public comment period should be set at 30 days, rather than having an open-ended requirement of "no less than 30 days."

b. This section should state that a public hearing will be held within 30 days of the close of the public comment period.

7. Appendix A (Pages 17-24)

a. Appendix A contains an elaborate calculation procedure for determining whether or not economic impacts of wastewater treatment alternatives are significant, when applied to a municipality. These include "calculating the municipal affordability screener" and "applying the secondary affordability test," culminating in an "assessment of substantial impacts matrix" under which certain criteria are applied to determine whether or not the pollution control is affordable. This proposal raises the following questions: (i) What is the source of this assessment procedure? and (2) Has this procedure been applied to New Mexico communities on a test basis to determine whether it is workable here?

b. NMED should provide some sample calculations using different costs of treatment and actual data from New Mexico communities to demonstrate the applicability of this

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approach in our state, as well as to identify potential thresholds. These sample calculations should be included in Appendix A.

c. On page 24, there is a loosely defined procedure for determining “widespread impacts—evaluates the social costs of pollution control requirements.” This procedure identifies the information to be considered, but provides no criteria for evaluating that information. The procedure does not allow a party to determine whether “widespread impacts” are a factor, and it does not inform the public about how such impacts will be evaluated. NMED should specify how widespread social costs are to be evaluated.

Thank you for your consideration of these comments. If further discussion would be helpful, please do not hesitate to contact me.

Sincerely,

Jolene L. McCaleb

cc: L. Randy Kirkpatrick